CARRIERS—DAMAGES FOR LOSS OF MARKET—CARRIAGE OF GOODS DESTINED FOR ENEMIES—SEIZURE OF SHIPS.—The plaintiff shipped goods to South Africa upon the defendant's vessel, which unknown to the plaintiff carried supplies for the Boers. The goods of the plaintiff were intended for sale to the English troops before like goods should arrive from other places. The vessel was captured and detained by the English for three months. In an action for damages, *Held*, that the shipper may recover the difference between the market price of the goods at the time at which they should have been delivered and at the time when they were delivered. *Dunn* v. *Donald Currie & Co.* [1902],2 K. B. 614.

This decision seems to hinge upon the fact that the defendants knew of the market that the plaintiff expected for his goods. The court discussed the case of *The Parana*, 2 Prob. Div. (1877) 121, and at first blush they seem in conflict, but Mellish J., in that case says, "If it is known to both parties that the goods will sell at a better price if they arrive at one time than if they arrive at a later time, that may be a ground for giving damages for their arriving too late and selling for a lower price." In *The Parana* the defendant knew of the intended disposition of the goods. The former rule in both United States and England was that the loss of market as the measure of damages was too speculative to be applied to ships or carriers on waters. *The Nottinghill* (1884),9 P. D. 105; *The Parana*, ante; SEDGWICK ON DAMAGES, vol. 2 p. 110. In the bill of lading given by the defendant to the plaintiff there was an exception of liability for *restraint of princes*. The general rule seems to be that such an exception relieves the ship owner from liability in the absence of extenuating circumstances. AMERICAN & ENG. ENCY. LAW, vol. 7, p. 226; ANGELL ON CARRIERS, 7 ed. sec. 148, 200, 282; *Geipel* v. *Smith*, L. R. 7 Q. B. 404. The ship owner is not liable if the injury is caused alone by the act of the public enemy. HUTCHINSON ON CARRIERS, sec. 203; *Lewis* v. *Ludwick*, 46 Tenn. 368, s. c. 98 Am. Dec. 454; *Mrs. Alexander's Cotton*, 2 Wall. 404; *Bland* v. *Adams Exp. Co.*, 62 Ky. (1 Duvall) 232, 85 Am. Dec. 623. But the principle is well established that if the carrier's negligence exposes the goods to capture, or if he fails to use due diligence to prevent loss from the public enemy then he is liable for such loss. *Holladay* v. *Kennard*, 12 Wall. 254; *Caldwell* v. *S. Express Co.*, Fed. Cases 2303; *Tan Bark Case*. 1 Brown Admr. 151; HUTCHINSON ON CARRIERS, sec. 208-210. This principle seems to have had weight in the decision of this case as the court says, "The course which the defendant took in carrying the enemy's goods without the knowledge and consent of the other shippers was a breach of duty towards them." It was the act of war, but it was caused by the defendant's negligence. It was a wrong, and the damages resulting, conjoined to form a tort. Since the defendant knew of the market that the plaintiff expected for the goods shipped, he should be charged with the loss of it should it occur from his failure to use due care. *The Gold Hunter*, 1 Blatchford & How. Admiralty 300; *The Julia Smith*, 1 Newberry's Admiralty 166; *The Success*, Fed. Cases 13586, 7 Blatchford 551; *Page* v. *Monroe*, Holmes 232, Fed. Cases 10665; *Rowe* v. *City of Dublin*, Fed. Cases 12094, 1 Benedict 46; *The Golden Rule*, 9 Fed. Rep. 334; SEDGWICK ON DAMAGES (7 ed.) vol. 2, 107; ANGELL ON CARRIERS, (5th ed.) sec. 482 and notes. Based upon the peculiar facts of this case the decision appears sound both in principle and law.

CONSTITUTIONAL LAW—CIGARETTES—ORIGINAL PACKAGE.—Cigarettes purchased by appellant from a foreign manufacturer were packed in pasteboard boxes, containing ten cigarettes each, the packages being separately sealed and stamped. The packages were consigned to appellant, unenclosed